IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5775 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? (Only Para 5 to 9) : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANAKBHAI NARSANGBHAI PADHAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5775 of 2002

MR SHAKTISINH GOHIL for Petitioner No. 1

MR MK DAGALI ASSTT GOVT PLEADER for Respondent No. 1-4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/10/2002

ORAL JUDGEMENT

#. The petitioner was elected as Sarpanch of Barvala Gram Panchayat and was given charge on 16th January,

2002. The petitioner was removed as Sarpanch vide order dated 20th April, 2002 under Section 57[1] of the Gujarat Panchayats Act, 1993 [hereinafter referred to as `the Act' for short] by the District Development Officer, Ahmedabad. The said removal order was challenged by the petitioner by way of Appeal before the appellate authority, i.e. Development Commissioner, who, in turn, vide his order dated 6th June, 2002 dismissed the said appeal, confirming the order dated 20th April, 2002 passed by the District Development Officer. Being aggrieved by the aforesaid orders, the petitioner has approached this Court by way of this Special Civil Application.

#. The facts of this case reflect that the petitioner, while he was discharging his functions as Sarpanch, received a show cause notice under Section 57[1] of the Act which is at Annexure-B to the petition, wherein certain charges were levelled against the petitioner in the said show cause notice. Charge No.1 relates to non-mentioning of the date of next meeting in the Minutes of the meeting held on 15-3-2002 which was adjourned for want of quorum. Under the Rules, if the meeting is adjourned, in that very meeting, the date of next meeting is required to be announced by giving necessary information in that behalf. Since the petitioner has not done so, the said charge was levelled against him and thereby he was subjected to the charge of dereliction of the duty as Sarpanch.

Second ground relates to non calling of budget meeting even though request was made on behalf of 16 members for calling such meeting and accordingly, said charge was levelled on the ground that the petitioner has failed to discharge his duty.

Third charge relates to non-passing of the budget by stipulated time, i.e. 31st March, 2002. It is also alleged that the petitioner has deliberately failed to convene the meeting for the purpose of passing such budget and accordingly, the petitioner was found to be negligent in view of his failure in convening such meeting for passing the budget.

So far the last charge is concerned, it is alleged that it is mandatory to pass budget by 31st March, 2002 but the petitioner has deliberately not convened the meeting for the same and accordingly, he is negligent in discharging his duties and has failed to discharge his duty which was required to be performed under the provisions of the Act. From the record

produced before this Court, it has come on record that the petitioner gave a detailed reply dated 15th April, 2002, which is at page-20 of the compilation, wherein the petitioner has denied each and every allegation levelled against him.

#. So far as the first ground stated in the show cause notice is concerned, the petitioner pointed out that the meeting was convened on 15th March, 2002 for the purpose of passing the budget but said meeting was adjourned for want of requisite quorum. The petitioner pointed out that it is the duty of the Secretary to bring to the notice of the petitioner about giving another date. The petitioner also pointed out that as per the Rules and procedure of holding the meeting, it was the duty of the Secretary to record the Minutes of the meeting and for that, the petitioner cannot be held responsible.

As regards the second ground is concerned, it was submitted by the petitioner that since a No Confidence Motion was moved against the petitioner, for which, he was required to convene a meeting, he sought a clarification from the Development Commissioner as to which meeting he should call first. It is the case of the petitioner that he was not sure and was confused as to whether he should first call for the meeting in connection with the No Confidence Motion or the meeting for passing the budget. In this regard, a clarification was sought for by the petitioner vide his letter dated 21st March, 2002, which is at page-33 of the compilation. Thereafter, the Taluka Development Officer, by letter dated 26th March, 2002, directed the petitioner to convene immediately a meeting for the purpose of passing the budget by 31st March, 2002. The petitioner was also asked to show cause within two days as to why such meeting was not convened so far. The said letter is at page 36 of the compilation - Annexure-H. It is contended on behalf of the petitioner that the said letter written by the Taluka Development Officer was received by the Sarpanch - petitioner herein on 28th March, 2002 during evening hours. However, it is the case of the petitioner that at that relevant time, since the Talati-cum-Mantri was on leave and that as per the Rules, minimum three days' time was necessary for convening the meeting, he could not convene such meeting, as suggested by the Taluka Development Officer, in his letter dated 26th March, 2002. On behalf of the petitioner, it is argued by Mr.Shaktisinh Gohil, learned advocate, that in the meantime, by way of Circular meeting, the budget was already passed on 30th March, 2002. It is also pointed out that even in his reply to the Taluka Development

Officer, which is at page-23 of the compilation, this aspect regarding passing of the budget through circular meeting was reported as mentioned in his reply annexed with the compilation. Regarding the two remaining charges, in connection with non-passing of the budget by 31st March, 2002, it is the case of the petitioner that justification was given by the petitioner to the effect that since he was facing a No Confidence Motion, he sought for clarification from the Development Commissioner in the matter of calling meeting and that he received a letter from Taluka Development Officer on 28th March, 2002 and at that time, the Talati-cum-Mantri was on leave and it was therefore not possible to convene the meeting as the time stipulated for calling such meeting was three days' advance notice prior to such meeting. Over and above, it is submitted by the petitioner that, even otherwise, by Circular Meeting, the budge was already passed by 31st March, 2002. Under these circumstances, it was prayed that show cause notice may be withdrawn.

#. The District Development Officer thereafter, while exercising the powers under Section 57[1] of the Act, has passed the order, removing the petitioner as Sarpanch of the said village and the said order is confirmed in Appeal and ultimately, this petition is filed challenging the aforesaid orders.

#. At the time of hearing of this petition, it was strenuously argued by learned advocate Mr.Gohil that considering the facts and circumstances of the case, it was not just and proper to initiate the proceedings under Section 57[1] of the Act. It is submitted that initially meeting was already called, for the purpose of passing the budge but the same was required to be adjourned for want of quorum and thereafter, it is on record that the petitioner sought for an opinion from the Development Commissioner, as, the petitioner was also facing a No Confidence Motion and as a result thereof, he was not very sure as to which meeting should be called first, i.e., whether to call for a meeting to discuss the No Confidence Motion or for passing the budget. Mr.Gohil, learned advocate, submitted that, ultimately, if the No Confidence Motion was going to be passed against the petitioner, there was no reason in discussing the budget, inasmuch as, in the meeting for passing the budget, ultimately, the person, who is subsequently to be inducted as Sarpanch or In-charge Sarpanch, can put forward his own views at the time of passing the budget. It is therefore submitted that because of the aforesaid bona fide impression after adjourning the first meeting

held on 15th March, 2002, clarification was sought from the concerned authority. He also further submitted that a letter of Taluka Development Officer asking the petitioner to convene the budgetary meeting first was received at a very late stage, and, therefore on account of want of time as well as want of availability of Talati-cum-Mantri, who can call for such a meeting, the petitioner could not convene such meeting and, in the meantime, even by Circular Meeting, budget was already passed on 30th March, 2002. It is therefore submitted that considering aforesaid facts, it is clear that even otherwise budget has been passed by Circular meeting by majority and none of the members had opposed such circular meeting and even in this view of the matter, it is submitted that there is no question of resorting to Section 57[1] of the Act as the petitioner has done whatever was possible on his part.

Lastly, it is also contended that it was the statutory duty of the Talati-cum-Mantri and the Secretary of the Panchayat to mention the date of next meeting as per the prescribed procedure and Rules.

#. Mr.Dagali, learned AGP, supported the orders passed by the authorities below impugned in this petition.

#. At this stage, learned advocate Mr.Gohil for the petitioner has relied upon a decision of this Court [Coram : Mr.Justice M.R.Calla, J.] in case of KAMLABEN V. ADDL DEVELOPMENT COMMISSIONER reported in 41 [2] GLR 1174 wherein this Court has considered the scope of Section 57[1] of the Gujarat Panchayats Act, 1993. At this stage, Mr.Gohil made a reference to the observations made in para-6 of the aforesaid judgment which reads as under :-

"6. The nature of the allegations read with the replies as have been narrated hereinabove would show that all these allegations are in the nature of some financial irregularities and the same appear to have been explained by the petitioner. More so, there is no allegation whatsoever against the petitioner in person. There is no allegation against the petitioner that she had pocketed any money to her own advantage or that any loss was caused to the Panchayat or that the public interest has been made to suffer. The allegations show that objection is that procedure has not been followed while executing the development projects and for that purpose in the opinion of this Court the

petitioner cannot be held to be responsible for accounting procedure and the same stand fully explained by the replies as have been given. The guilt or misconduct of the Sarpanch in discharge of duties or any disgraceful conduct or abuse of power or making persistent default in performance of duties and functions under the Act etc. has to do with a related blemish on the part of the person concerned and not in the matter of the accounting procedure with regard to the budgets etc. in different development projects undertaken by the Panchayat for the welfare. It is not as if this Court is considering as to whether the allegations are proved or not, but this Court is concerned only with the question as to what is the nature of the allegations which can be said to be relevant for the purpose of removal of an elected Sarpanch on the grounds set out in Section 57[1] of the Act. If the allegations as set out against the petitioner in the instant case are taken to be the allegations relevant to the grounds of misconduct etc. as set out in Section 57[1], I think no elected office bearer or any functionary will be free from such objections of no consequence against the person concerned. It has to do with the discharge of the functions by the Panchayat, i.e. body as a whole on the basis of the resolutions passed by the Panchayat and no single individual can be held to be liable for such allegations so as to make him or her to suffer removal from an elected office. Unless and until there is something personal against the elected office bearer sought to be removed, Sec.57 [1] of the Act cannot be invoked. On the basis of the accounting procedure or irregularities therein, if any, no single elected office bearer of the Panchayat can be held to be liable so as to carve out a case of misconduct. If such allegations are taken to be the allegations for the purpose of Section 57[1] of the Act, then no elected member of the Panchayat who has participated in such meetings, shall escape the consequences as have been made to be suffered by the petitioner. In the opinion of this Court, for the purpose of removing an elected office bearer, there has to be concrete and credible material against him in person which must be germane to the grounds of misconduct etc. as mentioned in Sect.57[1] of the Act and therefore, I find that in the instant case, first of all, the show cause notice itself

was wholly misconceived. The author of the show cause notice failed to appreciate the real orientation of Section 57[1] of the Act and the show cause notice itself was wholly disoriented."

#. Relying on the aforesaid judgment, it is argued by learned advocate Mr.Gohil that assuming that the budget is not passed within the stipulated time, then also no blame can be thrown on the petitioner alone and the entire body is required to be removed under Section 253 of the Gujarat Panchayats Act, 1993 by forming an opinion under Section 116 [4] of the Act. It is also argued by Mr.Gohil, relying upon the aforesaid judgment, that it cannot be said that the petitioner has abused his powers or he has been committing default persistently in the performance of his duties.

#. It is required to be noted that the petitioner has drawn the attention of the authority concerned from time to time and because of the situation created in view of the no confidence motion which was moved against the petitioner, naturally, he was not sure whether first a meeting should be called for either for discussing the proposed no confidence motion or for passing of the budget. Before removing an elected representative, the authority is required to consider the matter by considering the entire material on record as well as the aspect regarding whether such person is committing persistent default in discharging his duties. In fact, the authority ought to have taken into consideration the fact as to whether there was any genuine ground available for the petitioner for not convening the meeting or as to whether his action is such by which it can be presumed that he is not discharging his duties, and the petitioner has been committing persistent defaults, as contemplated under Section 57[1] of the Act. The explanation given by the petitioner, as discussed above, has not been considered at all by the District Development Officer in his order. Even there is no mention in the order whether, in fact, the budget was passed through the Circular Meeting, as contended by the petitioner, as the said fact has also been pointed out in his reply, as discussed earlier. It also transpires that the authority has also not discussed as to on which date the petitioner had received the opinion of the Taluka Development Officer and whether the say of the petitioner that he received the said letter in the late evening of 28th March, 2002 is correct or not. The authority before taking decision in the matter, is bound to take into account all the points raised by the petitioner on

merits. However, it seems that some of the contentions raised by the petitioner in his reply / explanation tendered against the show cause notice, have not been taken into consideration by the authority before passing the final order against the petitioner. In view of the above, as passing of the order under Section 57[1] of the Act will have serious civil consequences, as, an elected person can be removed by resorting to the provisions of the Gujarat Panchayats Act, the authority is required to take into consideration all the contentions so raised before passing such order. The grounds submitted in defence by such person are required to be dealt with appropriately on its own merits.

##. So far as the removal order on the ground of nonpassing of the budget by 31st March, 2002 is concerned, this Court has already taken a view that the provision is not mandatory and it is directory and therefore, simply because the budget is not passed by that date, it can never be said to be a ground for passing order of removal and therefore, assuming that the budget is not passed by the said date, the same would not be a ground for removing the Sarpanch from his post. Since the District Development Officer has not considered all the points raised by the petitioner in his reply, the matter is required to be sent back for reconsideration on the aforesaid aspects and all the points are required to be considered by the first authority and since the same has not been considered, this petition is required to be allowed by remanding the matter to the District Development Officer for fresh consideration in light of above observations.

##. The petition is accordingly allowed. Consequently, the order of the District Development Officer at Annexure-D as well as the order of the Development Commissioner at Annexure-A are hereby quashed and set aside. The consequential effect of this order is that the petitioner is restored as Sarpanch of the Barvala Gram Panchayat. The respondent D.D.O. is directed to take fresh decision by 31st January, 2003 after hearing the petitioner. However, it is clarified that till fresh decision is taken by the District Development Officer, the petitioner in the capacity of Sarpanch will not take any policy decision in connection with the affairs of the Panchayat and shall also face proposed No Confidence Motion, if any, pending and therefore, he shall convene a meeting even if such meeting is for consideration of no confidence motion against the Sarpanch, without any further delay. Learned advocate Mr.Shaktisinh Gohil assured this Court that the petitioner will convene a

meeting without even waiting for final decision and / or order in the present proceeding. However, the petitioner shall call for such meeting after assuming of charge as Sarpanch and the Taluka Development Officer is also directed to hand over the charge of Sarpanch to the petitioner forthwith. Respondents Nos.3 & 4 are directed to hand over the charge of Sarpanch to the petitioner forthwith within three days on receipt of the writ of this Court and after assuming the charge, the petitioner is directed to convene the meeting for the purpose of discussing the No Confidence Motion within a period of one week thereafter.

The petition stands allowed accordingly. Rule is made absolute to the extent indicated hereinabove with no order as to costs.

##. The Registry is directed to send the Writ of this order to respondent Nos.3 & 4 forthwith.

Date : 30-10-2002 [P. B. Majmudar, J.]

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